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11
12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**
14

15 VERNON MR. UNSWORTH,
16 Plaintiff,
17 vs.
18 ELON MUSK,
19 Defendant.

Case No. 2:18-cv-08048

Judge: Hon. Stephen V. Wilson

**DEFENDANT ELON MUSK'S
MOTION TO ENFORCE TRIAL
SUBPOENA DUCES TECUM TO
VERNON UNSWORTH**

Complaint Filed: September 17, 2018
Trial Date: December 3, 2019

Hearing Date: November 25, 2019
Time: 3:00 p.m.
Courtroom: 10A

1 PLEASE TAKE NOTICE that on November 25, 2019 at 3:00 p.m. in
2 Courtroom 10A of the above-titled Court, Defendant Elon Musk Defendant will
3 move this Court for an order compelling Plaintiff Vernon Unsworth to produce on
4 November 29, 2019 those documents described in the Subpoena to Appear and
5 Testify at a Trial in a Civil Action, which was duly served on November 12, 2019.

6 This motion is made pursuant to this Notice of Motion, the concurrently-filed
7 Memorandum of Points and Authorities, the Declaration of Michael Lifrak (and all
8 exhibits thereto), the [Proposed] Orders Granting Mr. Musk's Motion to Enforce the
9 Trial Subpoena Duces Tecum to Vernon Unsworth, the files and records in this
10 action, and any such additional argument or materials as may be submitted to the
11 Court before the time of the decision in this matter.

12 This motion is made following the conference of counsel pursuant to C.D. Cal.
13 L.R. 7-3, which took place on November 5 and 6, 2019.

14
15 DATED: November 18, 2019

Respectfully submitted,

16 QUINN EMANUEL URQUHART &
17 SULLIVAN, LLP

18 By /s/ Alex Spiro

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INTRODUCTION

Mr. Unsworth has, at every turn, tried to prevent Mr. Musk from obtaining the evidence necessary to defend himself. Remarkably, the most harmful documents to Mr. Unsworth's case – those that depict him in an unflattering light, reveal his manipulation of others, and demonstrate his pursuit of money above all else – have been produced only *after* his deposition and *after* discovery closed.

But the documents Mr. Unsworth produced after the completion of discovery provided more questions than answers. Among other things, they specifically referred to other relevant documents that Mr. Unsworth still has not produced – and refuses to produce. These documents are crucial to Mr. Musk's ability to defend himself. The Court should order Mr. Unsworth comply with the trial subpoena duces tecum that was served upon him, and produce the materials Mr. Musk has requested shortly before the start of the trial.

STATEMENT OF RELEVANT FACTS

A. Mr. Unsworth's Persistent Failure to Produce Relevant Materials.

Mr. Unsworth made his first production of responsive documents on August 1, 2019. This production contained fewer than 500 pages of self-serving materials, selected by Mr. Unsworth. (Declaration of Michael Lifrak ("Lifrak Decl.") ¶ 3.) Numerous categories of responsive materials – such as communications between Mr. Unsworth and individuals involved in the cave rescue efforts, communications between Mr. Unsworth and his wife, communications between Mr. Unsworth and his Thai partner, Tik, communications between Mr. Unsworth and the press, and communications between Mr. Unsworth's counsel and the press – were glaringly missing from the production set. (Lifrak Decl. Ex. 1.) After conferring on the

1 missing materials, and on the eve of his deposition, Mr. Unsworth produced another
2 2,800 pages of responsive documents.¹ (Lifrak Decl., ¶ 5.)

3 The discovery cutoff of September 13 came and went. On September 23,
4 2019, Mr. Unsworth made his fourth production (his second belated production) of
5 responsive documents. (Lifrak Decl. ¶ 7.) This production of approximately 200
6 pages of additional materials contained numerous critical documents, including an
7 82-page text conversation between Mr. Unsworth and Thanet Natisri, which
8 contained journal-like details of Mr. Unsworth's activities during and after the
9 rescue. This document chronicles Mr. Unsworth's attempts to monetize his role in
10 the rescue (even by impeding the opportunities of others), and criticize the role of
11 many who participated in the rescue, including those who risked their lives. (Lifrak
12 Decl. Ex. 2.) This production also contained complete versions of texts between
13 Mr. Unsworth and his wife, Vanessa, that had been produced in partial and undated
14 format previously. (Lifrak Decl. Ex. 3.) These documents revealed conversations
15 between Mr. Unsworth and his wife that not only paint Mr. Unsworth in an
16 unflattering light, but also challenge his claim for damages based on the supposed
17 pain and suffering of his family. (*Id.* at VU03413.)

18 These documents, produced after the close of discovery, referenced a
19 significant number of additional responsive, unproduced materials. On September
20 26, counsel for Mr. Musk detailed these deficiencies in correspondence to counsel
21 for Mr. Unsworth. (Lifrak Decl. Ex. 4.) The deficiencies included, for example,
22 hundreds of media files that were indicated in the Mr. Unsworth's chat log with Mr.
23 Natisri, materials related to Mr. Unsworth's relationship with his
24 agent/representative, Will Robinson, to monetize his role in the rescue, and
25 materials related to Mr. Unsworth's communications with agents and production

26 ¹ Despite appearances of a fulsome production, however, 1900 pages of the
27 2800 page production was comprised of copies of the Complaint, forwarded to
28 various members of the press. (Lifrak Decl., ¶ 6.)

1 studios relating to his role in the rescue, including representatives of Creative Artists
2 Agency (“CAA”), SKG Global, Warner Brothers, and Netflix. (*Id.*) In addition,
3 counsel for Mr. Musk expressed concern over Mr. Unsworth’s failure to produce
4 communications with his partner, Tik, notwithstanding the fact that Tik testified in
5 deposition that she and Mr. Unsworth communicate on the applications WhatsApp
6 and Line. (*Id.*)

7 Counsel for Mr. Unsworth responded the following day, denying that there
8 were responsive communications between Mr. Unsworth and Tik, denying that Mr.
9 Unsworth had ever been formally represented by Mr. Robinson, denying that Mr.
10 Unsworth had ever arrived at a deal with SKG Global or Warner Brothers, and
11 denying that Mr. Unsworth had any correspondence with CAA. (Lifrak Decl. Ex.
12 5.) Counsel further indicated that because no money was generated via the
13 relationships that did exist between Mr. Unsworth and these various entities, the
14 relationships were non-responsive. (*Id.*). Ultimately counsel agreed to search for
15 additional materials despite their supposed “irrelevance and non-responsiveness.”
16 (*Id.*)

17 After Mr. Musk threatened to move to compel this information, Mr. Unsworth
18 produced an additional approximately 100 pages of documents on October 4,
19 2019. (Lifrak Decl., ¶ 7.). While this production did include some communications
20 between Mr. Unsworth and Mr. Robinson, it did not include any communications
21 with other representatives or agencies. On November 5, counsel for Mr. Musk again
22 outlined the many and various communications that Mr. Unsworth’s documents,
23 primarily the chat conversation with Mr. Natisri, revealed the existence of. (Lifrak
24 Decl. Ex. 6.) These include numerous additional emails between Mr. Unsworth and
25 Mr. Natisri which have never been produced, as well as communications between
26 Mr. Unsworth and Peter Ahmed of SKG Global/Warner Brothers, and additional
27 communications between Mr. Unsworth and Mr. Robinson. (*Id.*)
28

1 Counsel for Mr. Unsworth responded that Mr. Musk's prior discovery
 2 requests did not seek this information, that the information sought is irrelevant, that
 3 the information sought does not exist, and/or that the information sought has already
 4 been produced (although no identification of such production has ever been
 5 provided). (Lifrak Decl. Exs. 7, 8.) Upon further discussion regarding the
 6 responsiveness of the information, the parties could not reach agreement for
 7 additional production. (Lifrak Decl. ¶15.)

8 **B. The Trial Subpoena to Mr. Unsworth Seeks Responsive Materials**
 9 **Known to Exist.**

10 As the parties are now on the eve of trial, and desiring to stop Mr. Unsworth's
 11 endless game-play, Mr. Musk has issued a trial subpoena to Mr. Unsworth,
 12 requesting the production of specific documents that are referenced in other
 13 documents but have not been produced. (Lifrak Decl. Ex. 9.) All of the documents
 14 requested are those materials, known to exist, which Mr. Musk has previously
 15 identified to Mr. Unsworth. They all are directly related to the cave rescue and Mr.
 16 Unsworth's role. The subpoena requests include:

- 17 1. The email communications between [Mr. Unsworth] and Thanet
 18 Natisri, which took place on or about July 4, 2018, as referenced at
 19 VU03319.
- 20 2. The email communications between [Mr. Unsworth] and Thanet
 21 Natisri, which took place on or about August, 3, 2018, as referenced at
 22 VU03329.
- 23 3. The email communications between [Mr. Unsworth] and Thanet
 24 Natisri, which took place on or about September 16, 2018, as
 25 referenced at VU0334.
- 26 4. The email communications between [Mr. Unsworth] and Thanet
 27 Natisri, which took place on or about October 27, 2018, as referenced
 28 at VU03363.

- 1 5. The email communications between [Mr. Unsworth], Dr. Craig
- 2 Challen, Dr. Richard Harris, and/or Ellis Henican, which took place on
- 3 or about November 13, 2018, as referenced at VU03370.
- 4 6. The email communications between [Mr. Unsworth] and Will
- 5 Robinson, which took place on or about November 13, 2018, as
- 6 referenced at VU03370.
- 7 7. The email communications between [Mr. Unsworth] and anyone at
- 8 Creative Artists Agency, or “CAA,” which took place on or about
- 9 November 13, 2018, as referenced at VU03371.
- 10 8. The email communications between [Mr. Unsworth] and Thanet
- 11 Natisri, which took place on or about November 16, 2018, as
- 12 referenced at VU03372.
- 13 9. The email communications between [Mr. Unsworth] and Thanet
- 14 Natisri, which took place on or about November 16, 2018, as
- 15 referenced at VU03372
- 16 10. The email communications between [Mr. Unsworth] and Thanet
- 17 Natisri, which took place on or about November 17, 2018, as
- 18 referenced at VU03373.
- 19 11. All text communications sent via the text chat group “Vern - Tham
- 20 Luang Team,” as referenced in VU00600.
- 21 12. All communications between [Mr. Unsworth] and Ahmed (Peter)
- 22 Nafis, as referenced in VU00602-03, VU00629, VU03391-92.
- 23 13. All media, including but not limited to, photos, videos, stickers, emojis,
- 24 and/or other symbols that are identified in documents VU00579-591,
- 25 VU00592, VU00593, VU00600-602, VU00603-605, VU00610,
- 26 VU00615-616, VU00629-634, VU00639-662, VU00663-730
- 27 VU03314-3394, which have not yet been produced in this action.
- 28

1 **C. The Subpoenaed Materials Are Responsive To Mr. Musk’s Prior**
 2 **Discovery Requests.**

3 For ease of reference, and the sake of clarity, the materials sought by the trial
 4 subpoena to Mr. Unsworth are responsive to the following requests for production
 5 issued to Mr. Unsworth in this case. (Lifrak Decl. Ex. 10.) They are no surprise.

6 **REQUEST FOR PRODUCTION NO. 1:**

7 All documents or communications concerning the Cave Rescue, including but
 8 not limited to Your role or roles in the Cave Rescue.

9 **REQUEST FOR PRODUCTION NO. 2:**

10 All communications between You and any Person involved in the Cave
 11 Rescue, including but not limited to communications with Richard Stanton, Rob
 12 Harper, John Volanthen, members of the British Cave Rescue Council, Ali
 13 Comkeaw, Nikorn Phopluechai, Hataiwan Patisan, members of the Thai navy, or
 14 Thai government officials.

15 **REQUEST FOR PRODUCTION NO. 11:**

16 All documents concerning the allegations in paragraph 44 of the Complaint
 17 that your surveys of the Cave System helped find the Boys, including but not limited
 18 to documents, surveys, studies, or maps You created or You caused to be created
 19 concerning the Cave System.

20 **REQUEST FOR PRODUCTION NO. 19:**

21 All documents concerning any damage You claim to have suffered as a result
 22 of Mr. Musk’s actions, including the “substantial and permanent damage” You
 23 allege in paragraph 130 of the Complaint.

24 **REQUEST FOR PRODUCTION NO. 25:**

25 All documents and communications concerning any offers to publish Your
 26 version of events in relation to the Cave Rescue, including but not limited to
 27 documents showing amounts offered for publication, drafts of such publications, and
 28 communications with publishers.

1 **REQUEST FOR PRODUCTION NO. 26:**

2 All documents concerning any other actual or potential income you have
3 earned in any way connected to the Cave Rescue.

4 **REQUEST FOR PRODUCTION NO. 47:**

5 To the extent not covered by the other Requests herein, all documents
6 authored by You, provided to You, or read by You concerning: (a) Mr. Musk; (b)
7 this Litigation; or (c) any of the allegations underlying the Complaint, including but
8 not limited to the injuries or damages that You allege.

9 **LEGAL DISCUSSION**

10 **I. THE COURT HAS THE POWER TO ORDER COMPLIANCE WITH**
11 **THE TRIAL SUBPOENA.**

12 Mr. Musk requests that the Court order production of the materials outlined
13 above, and that Mr. Unsworth be required to produce them no later than November
14 29, 2019. Trial courts have enforced trial subpoenas requiring a person to bring
15 documents to trial where the subpoena is narrowly focused and does not seek to
16 introduce new matters into the case, where the materials are needed for trial
17 preparation, or where the materials are sought for impeachment. *See, e.g., Alvarado*
18 *v. Rainbow Inn, Inc.*, 2016 WL 10703674, at *1 (D.D.C. Feb. 5, 2016)(ordering
19 compliance with trial subpoena “[b]ecause the information sought in the subpoena is
20 narrow in scope and appears directed solely at impeachment”); *Joseph P. Carroll*
21 *Ltd. v. Baker*, 2012 WL 1232957, at *3 (S.D.N.Y. Apr. 12, 2012) (enforcing a trial
22 subpoena for documents that was “limited in scope and will not lead to additional
23 discovery or delay the trial date of this action....”) *See also nSight, Inc. v.*
24 *PeopleSoft, Inc.*, 2006 WL 988807, at *2 (N.D. Cal. Apr. 13, 2006) (“Trial
25 subpoenas ... include requests for attendance at a hearing or trial ... and may be used
26 in narrow circumstances to secure documents.”)(citations omitted).

27 All materials sought by Mr. Musk’s trial subpoena are covered by his
28 previous discovery requests served on Mr. Unsworth during the discovery period.

1 The issue here is not new requests for production, but rather the newly discovered
2 existence of specific documents that are responsive to the prior requests.
3 Accordingly, these requests do not circumvent the Court's discovery deadline or
4 otherwise run afoul of limitations on the use of trial subpoenas. *See Gaudin v.*
5 *Remis*, 2007 WL 294130 at *4 (D. Hawaii Jan. 29, 2007) (where hearing subpoena
6 sought an update of previously requested and provided information, the subpoena at
7 issue was not discovery in violation of discovery restrictions). *Cf. Hatcher v.*
8 *Precoat Metals*, 271 F.R.D. 674, 675 (N.D. Ala. 2010) (although the Court
9 confirmed that trial subpoenas duces tecum are permitted, it quashed the subpoena
10 seeking basic requests that should have been made under Rule 34); *Rice v. United*
11 *States*, 164 F.R.D. 556, 558 n. 1 (N.D.Okla.1995) (Rule 45 subpoena duces tecum
12 cannot be used as a form of discovery to circumvent deadlines).

13 Accordingly, such materials are within the Court's discretion to order under
14 Federal Rule of Civil Procedure 45(a)(1)(C).

15 **II. THE MATERIALS MR. MUSK SEEKS ARE PLAINLY RESPONSIVE.**

16 The trial subpoena requests to Mr. Unsworth are narrowly tailored and
17 redundant to document requests Mr. Musk served in discovery. Nine of the thirteen
18 subpoena requests to Mr. Unsworth seek specific communications between him and
19 other individuals that participated in the cave rescue, about topics related to the
20 rescue. These communications are directly responsive to Mr. Musk's Requests for
21 Production Nos. 1 and 2. Three of the thirteen subpoena requests seek specific
22 communications between Mr. Unsworth and agents or representatives pertaining to
23 his attempts to monetize his role in the rescue. These communications are directly
24 responsive to Mr. Musk's Requests for Production Nos. 25 and 26. The final
25 request seeks media that had been sent as a part of the chat conversations Mr.
26 Unsworth had already produced, and is critical to the ability to read and understand
27
28

1 such chat conversations.²

2 The subpoena requests also identify the precise materials sought thereby. The
3 requests specify the date the communications were made, and provides bates
4 numbered references for Mr. Unsworth to locate the materials. Accordingly, the
5 burden of locating and producing these materials is small.

6 **III. MR. UNSWORTH HAS THWARTED MR. MUSK’S ATTEMPTS TO**
7 **OBTAIN THESE MATERIALS IN DISCOVERY.**

8 As described above, one of the most important documents in the case is Mr.
9 Unsworth’s 81 page chat correspondence with Mr. Natisri. This document,
10 produced after discovery on September 23, 2019, is critical to Mr. Musk’s defense.
11 In it, Mr. Unsworth consistently diminishes others who participated in the rescue,
12 including those who risked their lives, stated that he would “make the divers suffer”
13 because they were getting more fame than him, took issue with the performance of
14 the Thai Navy Seals (one of whom lost his life in the rescue, and criticized the
15 decision-making of the Chiang Rai regional governor. (Lifrak Decl. Ex. 2.)
16 (VU03322, 27, 32, 37, 45, 59, 70-71). Counsel for Mr. Unsworth has implied that
17 the delayed production of this key document was due to the fact that the
18 communication was made via the application LINE. (Lifrak Decl. Ex. 5.) However,
19 that does not explain why no other communications with Mr. Natisri, whom Mr.
20 Unsworth worked closely with during the cave rescue, and kept in close regular
21 contact after the rescue, was never produced.

22 Indeed, the chat correspondence details numerous emails exchanged between
23 them. Shockingly, however, Mr. Unsworth has produced only one such
24 communication, and did not do so until October 4, 2019. This communication
25 depicts Mr. Unsworth in an unflattering light, as he describes his attempts to thwart

26 ² The materials Mr. Musk has subpoenaed may also be responsive to Requests
27 for Production Nos. 11, 19, and 47, based on the context in which reference to the
28 materials was made.

1 the efforts of rescue divers Dr. Craig Challen and Dr. Richard Harris to monetize the
 2 story of their participation in the rescue.³ (Lifrak Decl. Ex. 11.) What is significant
 3 is not that this document was finally produced, but that it was withheld for so long.
 4 Thus, with good reason, Mr. Musk is highly concerned about the content of the
 5 unproduced communications with Mr. Natisri, and others. These documents, along
 6 with the other specific communications requested, are critical for Mr. Musk's
 7 continued trial preparations, and may prove to be key to the cross-examination of
 8 Mr. Unsworth and should be ordered produced by the Court. *See Alvarado*, 2016
 9 WL 10703674, at *1; *Joseph P. Carroll Ltd.*, 2012 WL 1232957, at *3.

10 Accordingly, the Court should Order Mr. Unsworth's full compliance with
 11 the trial subpoena duces tecum.

12 CONCLUSION

13 For the aforementioned reasons, the Court should grant Mr. Musk's motion
 14 enforcing the trial subpoena duces tecum to Vernon Unsworth.

15 DATED: November 18, 2019

16 Respectfully submitted,

17 QUINN EMANUEL URQUHART
 18 & SULLIVAN, LLP

19 By /s/ Alex Spiro

20 Alex Spiro

21 *Attorneys for Defendant Elon Musk*

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 27 ³ Mr. Musk has also requested specific communications between Mr. Unsworth,
 28 Dr. Harris, Dr. Challen, and the doctors' agent, Ellis Henican, that might shed
 further light on Mr. Unsworth's attempts to thwart their deal. (Lifrak Decl. Ex. 9.)